

108TH CONGRESS  
1ST SESSION

# S. 152

To assess the extent of the backlog in DNA analysis of rape kit samples, and to improve investigation and prosecution of sexual assault cases with DNA evidence.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 14, 2003

Mr. BIDEN (for himself, Mr. SPECTER, Ms. CANTWELL, Mrs. CLINTON, Mr. SCHUMER, Mr. CARPER, Mrs. FEINSTEIN, Mr. DURBIN, Mr. LEAHY, Mr. JEFFORDS, Mr. CRAIG, Mr. WARNER, Mrs. MURRAY, Mr. EDWARDS, Ms. COLLINS, Mr. CORZINE, Mr. ALLEN, Ms. LANDRIEU, Mr. KOHL, and Ms. STABENOW) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To assess the extent of the backlog in DNA analysis of rape kit samples, and to improve investigation and prosecution of sexual assault cases with DNA evidence.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “DNA Sexual Assault  
5 Justice Act of 2003”.

1 **SEC. 2. ASSESSMENT OF BACKLOG IN DNA ANALYSIS OF**  
2 **SAMPLES.**

3 (a) ASSESSMENT.—The Attorney General, acting  
4 through the Director of the National Institute of Justice,  
5 shall survey Federal, State, local, and tribal law enforce-  
6 ment jurisdictions to assess the amount of DNA evidence  
7 contained in rape kits and in other evidence from sexual  
8 assault crimes that has not been subjected to testing and  
9 analysis.

10 (b) REPORT.—

11 (1) IN GENERAL.—Not later than 1 year after  
12 the date of enactment of this Act, the Attorney Gen-  
13 eral shall submit to Congress a report on the assess-  
14 ment carried out under subsection (a).

15 (2) CONTENTS.—The report submitted under  
16 paragraph (1) shall include—

17 (A) the results of the assessment carried  
18 out under subsection (a);

19 (B) the number of rape kit samples and  
20 other evidence from sexual assault crimes that  
21 have not been subjected to DNA testing and  
22 analysis; and

23 (C) a plan for carrying out additional as-  
24 sessments and reports on the backlog in crime  
25 scene DNA testing and analysis.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There is  
2 authorized to be appropriated to the Department of Jus-  
3 tice to carry out this section \$500,000 for fiscal year  
4 2004.

5 **SEC. 3. THE DEBBIE SMITH DNA BACKLOG GRANT PRO-**  
6 **GRAM.**

7 Section 2 of the DNA Analysis Backlog Elimination  
8 Act of 2000 (42 U.S.C. 14135) is amended—

9 (1) by striking the heading and inserting “**AU-**  
10 **THORIZATION OF DEBBIE SMITH DNA BACK-**  
11 **LOG GRANTS.**”; and

12 (2) in subsection (a)—

13 (A) in paragraph (2), by inserting “includ-  
14 ing samples from rape kits and samples from  
15 other sexual assault evidence, including samples  
16 taken in cases with no identified suspect” after  
17 “crime scene”; and

18 (B) by adding at the end the following:

19 “(4) To ensure that DNA testing and analysis  
20 of samples from rape kits and nonsuspect cases are  
21 carried out in a timely manner.”.

1 **SEC. 4. INCREASED GRANTS FOR ANALYSIS OF DNA SAM-**  
 2 **PLES FROM CONVICTED OFFENDERS AND**  
 3 **CRIME SCENES.**

4 Section 2(j) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135(j)) is amended—

6 (1) in paragraph (1)—

7 (A) in subparagraph (B), by striking  
 8 “and” at the end; and

9 (B) by striking subparagraph (C) and inserting the following:

11 “(C) \$15,000,000 for fiscal year 2004;

12 “(D) \$15,000,000 for fiscal year 2005;

13 “(E) \$15,000,000 for fiscal year 2006;

14 “(F) \$15,000,000 for fiscal year 2007; and

15 “(G) \$15,000,000 for fiscal year 2008.

16 Amounts made available to carry out the purposes  
 17 specified in subsection (a)(1) shall remain available  
 18 until expended.”; and

19 (2) in paragraph (2), by striking subparagraphs  
 20 (C) and (D) and inserting the following:

21 “(C) \$75,000,000 for fiscal year 2004;

22 “(D) \$75,000,000 for fiscal year 2005;

23 “(E) \$75,000,000 for fiscal year 2006;

24 “(F) \$75,000,000 for fiscal year 2007; and

25 “(G) \$25,000,000 for fiscal year 2008.

1 Amounts made available to carry out the purposes  
 2 specified in paragraphs (2) and (3) of subsection (a)  
 3 shall remain available until expended.”.

4 **SEC. 5. AUTHORITY OF LOCAL GOVERNMENTS TO APPLY**  
 5 **FOR AND RECEIVE DNA BACKLOG ELIMI-**  
 6 **NATION GRANTS.**

7 Section 2 of the DNA Analysis Backlog Elimination  
 8 Act of 2000 (42 U.S.C. 14135) is amended—

9 (1) in subsection (a)—

10 (A) in the matter preceeding paragraph

11 (1)—

12 (i) by inserting “, units of local gov-  
 13 ernment, or Indian tribes” after “eligible  
 14 States”; and

15 (ii) by inserting “, unit of local gov-  
 16 ernment, or Indian tribe” after “State”;  
 17 and

18 (B) in paragraph (3), by striking “or by  
 19 units of local government” and inserting “,  
 20 units of local government, or Indian tribes”;

21 (2) in subsection (b)—

22 (A) in the matter preceding paragraph (1),  
 23 by inserting “or unit of local government, or  
 24 the head of the Indian tribe” after “State”  
 25 each place that term appears;

1 (B) in paragraph (1), by inserting “, unit  
2 of local government, or Indian tribe” after  
3 “State”;

4 (C) in paragraph (3), by inserting “, unit  
5 of local government, or Indian tribe” after  
6 “State” the first time that term appears;

7 (D) in paragraph (4), by inserting “, unit  
8 of local government, or Indian tribe” after  
9 “State”; and

10 (E) in paragraph (5), by inserting “, unit  
11 of local government, or Indian tribe” after  
12 “State”;

13 (3) in subsection (c), by inserting “, unit of  
14 local government, or Indian tribe” after “State”;

15 (4) in subsection (d)—

16 (A) in paragraph (1)—

17 (i) in subparagraph (A), by striking  
18 “or a unit of local government” and insert-  
19 ing “, a unit of local government, or an In-  
20 dian tribe”; and

21 (ii) in subparagraph (B), by striking  
22 “or a unit of local government” and insert-  
23 ing “, a unit of local government, or an In-  
24 dian tribe”; and

1 (B) in paragraph (2)(A), by inserting “,  
2 units of local government, and Indian tribes,”  
3 after “States”;

4 (5) in subsection (e)—

5 (A) in paragraph (1), by inserting “or local  
6 government” after “State” each place that term  
7 appears; and

8 (B) in paragraph (2), by inserting “, unit  
9 of local government, or Indian tribe” after  
10 “State”;

11 (6) in subsection (f), in the matter preceding  
12 paragraph (1), by inserting “, unit of local govern-  
13 ment, or Indian tribe” after “State”;

14 (7) in subsection (g)—

15 (A) in paragraph (1), by inserting “, unit  
16 of local government, or Indian tribe” after  
17 “State”; and

18 (B) in paragraph (2), by inserting “, units  
19 of local government, or Indian tribes” after  
20 “States”; and

21 (8) in subsection (h), by inserting “, unit of  
22 local government, or Indian tribe” after “State”  
23 each place that term appears.

1 **SEC. 6. IMPROVING ELIGIBILITY CRITERIA FOR BACKLOG**  
2 **GRANTS.**

3 Section 2 of the DNA Analysis Backlog Elimination  
4 Act of 2000 (42 U.S.C. 14135) is amended—

5 (1) in subsection (b)—

6 (A) in paragraph (4), by striking “and”  
7 after the semicolon;

8 (B) in paragraph (5), by striking the pe-  
9 riod at the end and inserting a semicolon; and

10 (C) by adding at the end the following:

11 “(6) if the applicant is a unit of local govern-  
12 ment, certify that the applicant participates in a  
13 State laboratory system;

14 “(7) provide assurances that, not later than 3  
15 years after the date on which the application is sub-  
16 mitted, the State, unit of local government, or In-  
17 dian tribe will implement a plan for forwarding, not  
18 later than 180 days after a DNA evidence sample is  
19 obtained, all samples collected in cases of sexual as-  
20 sault to a laboratory that meets the quality assur-  
21 ance standards for testing under subsection (d); and

22 “(8) upon issuance of the regulations specified  
23 in section 10(d), certify that the State, unit of local  
24 government, or Indian tribe is in compliance with  
25 those regulations.”; and

26 (2) by adding at the end the following:

1       “(k) PRIORITY.—In awarding grants under this sec-  
 2 tion, the Attorney General shall give priority to a State  
 3 or unit of local government that has a significant rape kit  
 4 or nonsuspect case backlog per capita as compared with  
 5 other applicants.”.

6 **SEC. 7. QUALITY ASSURANCE STANDARDS FOR COLLEC-**  
 7 **TION AND HANDLING OF DNA EVIDENCE.**

8       (a) NATIONAL PROTOCOL.—

9           (1) IN GENERAL.—The Attorney General shall  
 10 review national, State, local, and tribal government  
 11 protocols, that exist on or before the date of enact-  
 12 ment of this Act, on the collection and processing of  
 13 DNA evidence at crime scenes.

14           (2) RECOMMENDED PROTOCOL.—Based upon  
 15 the review described in paragraph (1), the Attorney  
 16 General shall develop a recommended national pro-  
 17 tocol for the collection of DNA evidence at crime  
 18 scenes, including crimes of rape and other sexual as-  
 19 sault.

20       (b) STANDARDS, PRACTICE, AND TRAINING FOR SEX-  
 21 UAL ASSAULT FORENSIC EXAMINATIONS.—Section  
 22 1405(a) of the Victims of Trafficking and Violence Protec-  
 23 tion Act of 2000 (42 U.S.C. 3796gg note) is amended—

1 (1) in paragraph (2), by inserting “and emer-  
 2 gency response personnel” after “health care stu-  
 3 dents”; and

4 (2) in paragraph (3), by inserting “and DNA  
 5 evidence collection” after “sexual assault forensic ex-  
 6 aminations”.

7 **SEC. 8. SEXUAL ASSAULT FORENSIC EXAM PROGRAM**

8 **GRANTS.**

9 (a) **AUTHORIZATION OF GRANTS.**—The Attorney  
 10 General shall make grants to eligible entities to—

11 (1) establish and maintain sexual assault exam-  
 12 iner programs;

13 (2) carry out sexual assault examiner training  
 14 and certification; and

15 (3) acquire or improve forensic equipment.

16 (b) **ELIGIBLE ENTITY.**—For purposes of this section,  
 17 the term “eligible entity” means—

18 (1) a State;

19 (2) a unit of local government;

20 (3) a college, university, or other institute of  
 21 higher learning;

22 (4) an Indian tribe;

23 (5) sexual assault examination programs, in-  
 24 cluding sexual assault nurse examiner (SANE) pro-  
 25 grams, sexual assault forensic examiner (SAFE)

1 programs, and sexual assault response team (SART)  
2 programs; and

3 (6) a State sexual assault coalition.

4 (c) APPLICATION.—To receive a grant under this sec-  
5 tion—

6 (1) an eligible entity shall submit to the Attor-  
7 ney General an application in such form and con-  
8 taining such information as the Attorney General  
9 may require; and

10 (2) an existing or proposed sexual assault ex-  
11 amination program shall also—

12 (A) certify that the program complies with  
13 the standards and recommended protocol devel-  
14 oped by the Attorney General pursuant to sec-  
15 tion 1405 of the Victims of Trafficking and Vi-  
16 olence Protection Act of 2000 (42 U.S.C.  
17 3796gg note); and

18 (B) certify that the applicant is aware of,  
19 and utilizing, uniform protocols and standards  
20 issued by the Department of Justice on the col-  
21 lection and processing of DNA evidence at  
22 crime scenes.

23 (d) PRIORITY.—In awarding grants under this sec-  
24 tion, the Attorney General shall give priority to proposed  
25 or existing sexual assault examination programs that are

1 serving, or will serve, populations currently underserved  
2 by existing sexual assault examination programs.

3 (e) RESTRICTIONS ON USE OF FUNDS.—

4 (1) SUPPLEMENTAL FUNDS.—Funds made  
5 available under this section shall not be used to sup-  
6 plant State funds, but shall be used to increase the  
7 amount of funds that would, in the absence of Fed-  
8 eral funds, be made available from State sources for  
9 the purposes of this section.

10 (2) ADMINISTRATIVE COSTS.—An eligible entity  
11 may not use more than 5 percent of the funds it re-  
12 ceives under this section for administrative expenses.

13 (3) NONEXCLUSIVITY.—Nothing in this section  
14 shall be construed to limit or restrict the ability of  
15 proposed or existing sexual assault examination pro-  
16 grams to apply for and obtain Federal funding from  
17 any other agency or department or any other Fed-  
18 eral grant program.

19 (f) AUTHORIZATION OF APPROPRIATIONS.—There  
20 are authorized to be appropriated to the Department of  
21 Justice, to remain available until expended, \$30,000,000  
22 for each of fiscal years 2004 through 2008 to carry out  
23 this section.

1 **SEC. 9. DNA EVIDENCE TRAINING GRANTS.**

2 (a) **AUTHORIZATION OF GRANTS.**—The Attorney  
3 General shall make grants to eligible entities to—

4 (1) train law enforcement personnel and all  
5 other first responders at crime scenes, including in-  
6 vestigators, in the handling of sexual assault cases  
7 and the collection and use of DNA samples for use  
8 as forensic evidence;

9 (2) train State and local prosecutors on the use  
10 of DNA samples for use as forensic evidence; and

11 (3) train law enforcement personnel to recog-  
12 nize, detect, report, and respond to drug-facilitated  
13 sexual assaults.

14 (b) **ELIGIBLE ENTITY.**—For purposes of this section,  
15 the term “eligible entity” means—

16 (1) a State;

17 (2) a unit of local government;

18 (3) a college, university, or other institute of  
19 higher learning; and

20 (4) an Indian tribe.

21 (c) **APPLICATION.**—To receive a grant under this sec-  
22 tion, the chief executive officer of a State, unit of local  
23 government, or university, or the head of a tribal govern-  
24 ment that desires a grant under this section shall submit  
25 to the Attorney General—

1           (1) an application in such form and containing  
2 such information as the Attorney General may re-  
3 quire;

4           (2) certification that the applicant is aware of,  
5 and utilizing, uniform protocols and standards  
6 issued by the Department of Justice on the collec-  
7 tion and processing of DNA evidence at crime  
8 scenes;

9           (3) certification that the applicant is aware of,  
10 and utilizing, the national sexual assault forensic ex-  
11 amination training protocols developed under section  
12 1405(a) of the Victims of Trafficking and Violence  
13 Protection Act of 2000 (42 U.S.C. 3796gg note);  
14 and

15           (4) if the applicant is a unit of local govern-  
16 ment, certification that the applicant participates in  
17 a State laboratory system.

18 (d) RESTRICTIONS ON USE OF FUNDS.—

19           (1) SUPPLEMENTAL FUNDS.—Funds made  
20 available under this section shall not be used to sup-  
21 plant State funds, but shall be used to increase the  
22 amount of funds that would, in the absence of Fed-  
23 eral funds, be made available from State sources for  
24 the purposes of this section.

1           (2) ADMINISTRATIVE COSTS.—An eligible entity  
2           may not use more than 5 percent of the funds it re-  
3           ceives under this section for administrative expenses.

4           (3) NONEXCLUSIVITY.—Nothing in this section  
5           shall be construed to limit or restrict the ability of  
6           an eligible entity to apply for and obtain Federal  
7           funding from any other agency or department or any  
8           other Federal grant program.

9           (e) AUTHORIZATION OF APPROPRIATIONS.—There  
10          are authorized to be appropriated to the Department of  
11          Justice \$10,000,000 for each of fiscal years 2004 through  
12          2008 to carry out this section.

13          **SEC. 10. AUTHORIZING JOHN DOE DNA INDICTMENTS.**

14          (a) LIMITATIONS.—Section 3282 of title 18, United  
15          States Code, is amended—

16                 (1) by striking “Except” and inserting the fol-  
17                 lowing:

18                 “(a) LIMITATION.—Except”; and

19                 (2) by adding at the end the following:

20                 “(b) DNA PROFILE INDICTMENT.—

21                         “(1) IN GENERAL.—In any indictment found  
22                         for an offense under chapter 109A, if the identity of  
23                         the accused is unknown, it shall be sufficient to de-  
24                         scribe the accused as an individual whose name is  
25                         unknown, but who has a particular DNA profile.

1           “(2) EXCEPTION.—Any indictment described in  
2 paragraph (1), which is found within 5 years after  
3 the offense under chapter 109A shall have been com-  
4 mitted, shall not be subject to—

5           “(A) the limitations period described in  
6 subsection (a); and

7           “(B) the provisions of chapter 208 until  
8 the individual is arrested or served with a sum-  
9 mons in connection with the charges contained  
10 in the indictment.

11           “(3) DEFINITION.—For purposes of this sub-  
12 section, the term ‘DNA profile’ means a set of DNA  
13 identification characteristics.”.

14           (b) RULES OF CRIMINAL PROCEDURE.—Rule 7 of  
15 the Federal Rules of Criminal Procedure is amended in  
16 subdivision (c)(1) by adding at the end the following: “For  
17 purposes of an indictment referred to in section 3282 of  
18 title 18, United States Code, if the identity of the defend-  
19 ant is unknown, it shall be sufficient to describe the de-  
20 fendant, in the indictment, as an individual whose name  
21 is unknown, but who has a particular DNA profile, as de-  
22 fined in that section 3282.”.

1 **SEC. 11. INCREASED GRANTS FOR COMBINED DNA INDEX**  
2 **(CODIS) SYSTEM.**

3 Section 210306 of the DNA Identification Act of  
4 1994 (42 U.S.C. 14134) is amended—

5 (1) by striking “There” and inserting the fol-  
6 lowing:

7 “(a) IN GENERAL.—There”; and

8 (2) by adding at the end the following:

9 “(b) INCREASED GRANTS FOR CODIS.—There is au-  
10 thorized to be appropriated to the Federal Bureau of In-  
11 vestigation to carry out upgrades to the Combined DNA  
12 Index System (CODIS) \$9,700,000 for fiscal year 2003.”.

13 **SEC. 12. INCREASED GRANTS FOR FEDERAL CONVICTED**  
14 **OFFENDER PROGRAM (FCOP).**

15 Section 3 of the DNA Analysis Backlog Elimination  
16 Act of 2000 (42 U.S.C. 14135a) is amended by adding  
17 at the end the following:

18 “(g) AUTHORIZATION OF APPROPRIATIONS.—There  
19 is authorized to be appropriated to the Federal Bureau  
20 of Investigation to carry out this section \$500,000 for fis-  
21 cal year 2003.”.

22 **SEC. 13. PRIVACY REQUIREMENTS FOR HANDLING DNA**  
23 **EVIDENCE AND DNA ANALYSES.**

24 (a) PRIVACY PROTECTION STANDARD.—Section  
25 10(a) of the DNA Analysis Backlog Elimination Act of  
26 2000 (42 U.S.C. 14135e(a)) is amended by inserting be-

1 fore the period at the end the following: “or in section  
2 3282(b) of title 18, United States Code”.

3 (b) LIMITATION ON ACCESS TO DNA INFORMA-  
4 TION.—Section 10 of the DNA Analysis Backlog Elimini-  
5 nation Act of 2000 (42 U.S.C. 14135e) is amended by  
6 adding at the end the following:

7 “(d) LIMITATION ON ACCESS TO DNA INFORMA-  
8 TION.—

9 “(1) IN GENERAL.—The Attorney General shall  
10 establish, by regulation, procedures to limit access  
11 to, or use of, stored DNA samples or DNA analyses.

12 “(2) REGULATIONS.—The regulations estab-  
13 lished under paragraph (1) shall establish conditions  
14 for using DNA information to—

15 “(A) limit the use and dissemination of  
16 such information, as provided under subpara-  
17 graphs (A), (B), and (C) of section  
18 210304(b)(3) of the Violent Crime Control and  
19 Law Enforcement Act of 1994 (42 U.S.C.  
20 14132(b)(3));

21 “(B) limit the redissemination of such in-  
22 formation;

23 “(C) ensure the accuracy, security, and  
24 confidentiality of such information;

1           “(D) protect any privacy rights of individ-  
2           uals who are the subject of such information;  
3           and

4           “(E) provide for the timely removal and  
5           destruction of obsolete or inaccurate informa-  
6           tion, or information required to be expunged.”.

7           (c) CRIMINAL PENALTY.—Section 10(c) of the DNA  
8           Analysis Backlog Elimination Act of 2000 (42 U.S.C.  
9           14135e) is amended—

10           (1) in paragraph (1), by striking “discloses a  
11           sample or result” and inserting “discloses or uses a  
12           DNA sample or DNA analysis”; and

13           (2) in paragraph (2), by inserting “per offense”  
14           after “\$100,000”.

○